IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. 741 of 2003

Date of Decision:18th May, 2007

Sukhdev Singh	Petitioner
Versus	
State of H.P. and others	Respondents

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]?

For the petitioner: Mr.Bhuvnesh Sharma, Advocate.

For the respondents: Mr.C.B.Singh, Dy. Advocate General for respondents 1 and 2.
Mr.Anup Rattan, Advocate, for respondent No.3.

Sanjay Karol, J. (Oral)

This judgment is being dictated in open Court in the presence of the learned counsel for the parties.

In terms of present writ petition, petitioner has assailed the order dated 22nd March, 2003 in Case No.35/2000 titled as The Chauri Co-operative Agriculture Service Society Ltd. vs. Sukh Dev Singh and another, passed by the Additional Secretary (Cooperation), Government of Himachal

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Whether the reporters of Local Papers are allowed to see the Judgment?

Pradesh, exercising powers of State Under Sections 93 and 94 of the H.P. Cooperative Societies Act, 1968 (hereinafter referred to as the Act). The challenge is on the ground that petitioner had not resigned as Secretary from the services of respondent No.3 and the finding to the contrary is not borne out from the record and is factually incorrect.

Petitioner was appointed as Secretary with respondent No.3-Society (hereinafter referred to as 'the Society') on 10th October, 1981. On the alleged persistent misconduct on the part of petitioner and his remaining under the influence of liquor during working hours, his services were terminated with effect from 29th September, 1994 vide resolution passed by the Society in the General House Meeting. Prior to his termination, petitioner was served with a charge-sheet, which was duly replied and considered. The said order of termination was assailed by the petitioner before the Assistant Registrar, Cooperative Societies, Hamirpur, who vide orders dated 30th December, 1994 set aside his orders of termination.

Petitioner submitted his resignation on 8th February, 1995 to the Assistant Registrar, Cooperative Societies, Hamirpur, who forwarded the same to the Society and vide resolution dated 17th February, 1995, the same was accepted.

In the interregnum, since the petitioner had not handed over the charge and also the assets/ account books, on the application moved by the Society, Sub Divisional Magistrate, Hamirpur, vide order dated 21st May, 1996 passed an order under Section 38(2) of the Act and directed that the premises be entered, searched and property of the Society be secured. Accordingly, property belonging to the Society was seized and handed over to the Society in the presence of the Assistant Registrar, Cooperative Societies, Hamirpur and Block Development Officer, Sujanpur. During audit, it was discovered that the petitioner had embezzled certain amounts belonging to the Society. Consequently, proceedings under Section 69(2) of the Act were initiated and vide orders dated 13th September, 1999 passed by the Assistant Registrar, Cooperative Societies, Hamirpur petitioner was found liable to pay Rs.61,322.83. The matter, however, did not end there.

Subsequently, after a gap of six years, petitioner filed an application before the Assistant Registrar, Cooperative Societies, Hamirpur seeking implementation of the order dated 30th December, 1994 whereby the order of termination dated 29th September, 1994 was set aside and petitioner was directed to be reinstated in service. The application of the

petitioner was decided in terms of order dated 13th June, 2000 wherein following directions were issued:-

> "It is true that the decision dated 13.9.99 for recovery of Rs.61,322.83 from Shri Sukhdev Singh under Section 69(2) has taken place. The recovery of which may be effected from the due date of his salary and it is ordered that order dated 30.12.1994 may not be implemented till recovery of the entire amount.
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> Since the respondent Cooperative Society has not appealed against the reinstatement order dated 30.12.1994, therefore, the Society is bound to implement the above order dated 30.12.94."

The plea of resignation was not accepted.

Against the said order, Society preferred a Revision under Sections 93, 94 of the Act, before the Secretary (Cooperation), which was registered as Case No.35/2000. After affording due opportunity to the petitioner Additional Secretary (Cooperation) by a reasoned order set aside the orders dated 13th June, 2000. He found that the petitioner had submitted his resignation and, therefore, there was no question of implementation of the order dated 30th December, 1994. He reiterated that the petitioner was liable to pay the amount already determined under Section 69(2) of the Act.

Learned counsel for the petitioner argued that there is no proof to the effect petitioner had tendered any resignation and in any case since the respondents did not communicate the acceptance of the same, he be deemed to be in service. Therefore, order dated 30th December, 1999 ought to have been implemented. According to him, there was no question of resignation as the petitioner had not even joined after reinstatement. Learned counsel has relied upon decisions of Supreme Court in **Raj Kumar** v. **Union of India**, reported in AIR 1969 SC 180 and **Rajasthan State Electricity Board and others** v. **Brij Mohan Parihar**, reported in (2000) 9 SCC 269.

Learned counsel for respondent No.3 has supported the impugned order for the reasons given in the order.

From the perusal of order dated 13th June, 2000, it is clear that the fact of petitioner's resignation has been rejected only on the ground that certified copy of resignation letter was not produced at the time of hearing. The Additional Secretary has adequately covered this aspect of the matter and has rightly found that resignation letter dated 8th February, 1995 was submitted by the petitioner himself to the Assistant Registrar, Cooperative Societies, Hamirpur, which in turn was forwarded to the Society who in turn accepted the same.

It is undisputed that between the year 1994 and 2000, petitioner never voiced the fact that he was not permitted to join or that the order of reinstatement was not implemented. Importantly, during this period between 1994 and 2000 proceedings under Section 69 were admittedly pending against the petitioner. Even in these proceedings the petitioner did not make any grievance with regard to the fact that he has not been permitted to join the Society. The Additional Secretary, in my view, has rightly held that petitioner had submitted his resignation and the order dated 13th June, 2000 passed by Assistant Registrar, Cooperative Societies, Hamirpur is wrong and liable to be set aside.

The judgments referred to by the learned counsel for the petitioner, in my view, do not help him all. In fact *Rajasthan State Electricity Board (supra)* is against him. In that case respondent had tendered resignation on 10th October, 1983 to be effective from 25th November, 1983. He absented himself from duty from that date and reported only on 22nd August, 1987. The Court held that his conduct itself was sufficient to indicate that he had treated himself to be resigned from the post he was holding with effect from 25th November, 1983.

On 21st August, 2003 when the matter was admitted, this Court passed the following order:-

"Notice to respondent No.3.

Subject to the petitioner depositing an amount of Rs.61,323/- with respondent No.3 within four weeks from today, the execution of the impugned order in so far as it directs recovery of this amount against the petitioner shall stay."

Learned counsel for the parties submit that the order has been complied with and the amount has been paid to respondent-Society. Undisputably in terms of order dated 13th September, 1999 as passed by the Assistant Registrar, Cooperative Societies, Hamirpur, under Section 69 of the Act, petitioner is liable to pay this amount. In exercise of my powers in an equitable jurisdiction under Article 226 of the Constitution of India and in view of the law laid down by the Apex Court in Shangrila Food Products Ltd. and another vs. Life Insurance Corporation of India and another, reported in (1996) 5 SCC 54, I direct that the amount shall remain with the respondent-Society and be adjusted towards the same.

Learned counsel for the petitioner submits that respondent-Society in any case has to pay salary to the petitioner with effect from October, 1994 upto 17th February, 1995. Since respondent-Society had not

assailed the order of reinstatement, therefore, it is liable to pay the dues to the petitioner for the said period. While making adjustments, respondent No.3-Society shall take into account the same. Petitioner shall be entitled for refund of the balance amount which the Society shall pay within four weeks from today, failing which interest at the rate of 15% per annum shall be payable.

No other point was pressed or urged by the learned counsel for the parties.

For the foregoing reasons and observations, I see no reason to interfere with the order dated 22nd March, 2003 passed by Additional Secretary, Cooperation, in Case No.35/2000 and the writ petition is dismissed accordingly.

18th May, 2007
(C)

(Sanjay Karol),
Judge